IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1143 of 2004

in

SPECIAL CIVIL APPLICATION No 1455 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANUBHAI BHAVENBHAI PARMAR

Versus

DY. GENERAL MANAGER S B I

Appearance:

1. LETTERS PATENT APPEAL No. 1143 of 2004

MR VM DHOTRE for Appellant No.

MR DP JOSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 08/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-petitioner has challenged in this appeal the judgment and order dated 6.2.2004 passed by learned Single Judge of this court (Coram : A.L.Dave, J.) dismissing his Special Civil Application No.1455/04.

#. The appellant-petitioner was appointed on the post of Clerk-cum-Typist by an order dated 22.1.1974 in the respondent-State Bank of India. He was in habit of regularly remaining absent for which he was warned, but in spite of several warnings given to him he had not improved. On several occasions, he tendered his apology also for remaining absent without permission. At last, in 1987, his services were terminated by the impugned order. After having waited for 3 years, for the first time in 1990, he first approached the Central Industrial Tribunal, Gujarat, Ahmedabad by way of Reference (ITC) No.57/90, which came to be dismissed on merits by the learned Tribunal on 30.8.1991. Thereafter, he waited for almost 13 years in approaching this court by way of Special Civil Application No.1455/04. His Special Civil Application was summarily dismissed after having him heard in person by the learned Single Judge mainly on the ground that there was a delay of 13 years in approaching this court by way of writ petition after the Tribunal dismissed his reference and in all there was delay of almost 16 years after passing of the order of termination in 1987. When the learned Single Judge of this court has refused to exercise his discretionary writ jurisdiction in favour of the appellant-petitioner, then certainly this court would not like to interfere with such orders in Letters Patent Appeal and that too in favour of such a person, who was in habit of regularly remaining absent without permission.

#. Before parting, we must state that the appellant-petitioner though labelled his petition as petition under Art.226 of the Constitution, but strictly speaking it is a petition under Art.227 of the Constitution because he had approached this court by way of writ petition against the order of the Central Industrial Tribunal. In such type of cases, Letters Patent Appeal would not be maintainable. Even assuming for the sake of argument that appeal would be maintainable against such order, then also we would not

have interfered with such orders when the learned Single Judge refused to exercise his supervisory writ jurisdiction under Art.227 of the Constitution in favour of the appellant-petitioner.

In view of the above discussion, this appeal fails and is hereby dismissed. No order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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